(3)
CF 30F

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 2606 /2003
(Petition under article 227 of the Constitution of India)

PETITIONERS :

1) Chamara, aged about 70 years, S/o late Bharat,

2) Amaru, aged about 60 years, S/o late Bharat,

3) Jagat, aged about 35 years, S/o Chamaru,

4) Bhaktu, aged about 40 years, S/o Chamru,

5) Ramesh, aged about 25 years, S/o Gatti,

6) Jagdish, aged about 23 years, S/o Gatti,

7) Sukram, aged about 40 years, S/o Bhursu,

All are resident of Village Belgaon, Tahsil Kondagaon, Distt. Bastar (C.G.)

P. R. No. 24.12.03
Presented by Shri [illegible]
dated 19.12.03

VERSUS

RESPONDENTS :

1) Narayan, aged about 65 years, S/o Charan,

2) Sukhchand, aged about 50 years, S/o Laxminath,
Both R/o village Belgoan, Tahsil Kondagaon, Distt. Bastar (C.G.)

3) State of Chhattisgarh, through the Collector, Bastar at Jagadalpur, Distt. Bastar (C.G.)

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19.12.03
CLERK TO A.G. BILASPUR

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(2)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF CERTIORARI

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(48)

आदेश पत्रक

मामला क्रमांक W.P. NO. 2600/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	02/09/2003 Shri Vishnu Koshta, counsel for the petitioners. Heard. The petitioners have preferred this Writ Petition under Article 227 of the Constitution of India being aggrieved by the order dated 21/07/2003 passed by Civil Judge, Class I, Kondagaon, Dist. Bastar (CG) in Civil Suit No. 17-A/2002 by which learned trial Court rejected the application of the petitioners filed under Section 151 of the C.P.C., for taking the written statement and documents on record and allowed the application of the respondents/plaintiffs in that suit that after expiry of 90 days from the date of service of summons the defendants cannot be allowed to file the written statement in terms of the Order 8 Rule 1 of the C.P.C. It is admitted position that after service of summons on the petitioners, they appeared before the trial Court on 21/07/2003 and they filed the application under Section 151 of the C.P.C. on 21/07/2003 along with the written statement and documents. The main ground taken in that application	

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..... विरुद्ध .....

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	was that they were not able to collect the documents. Therefore, admittedly, the written statement was filed much beyond the period of 90 days i.e., after 175 days. In this connection, perusal of the order 8 Rule 1 of the Code of Civil Procedure provide that the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence, provide that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. Therefore, perusal of the above provision reveals that in ordinary course 30 days' time is allowed to file the written statement. However, the Court for the reasons to be recorded, can extend upto 90 days, but beyond 90 days' this provision does not make any exception or does not give any discretion to the Court to allow the defendant to file the written statement for whatever reasons may be. Therefore, in	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

view of this provision, the petitioners have not filed the written statement within 90 days.

The scope under Article 227 of the Constitution of India has been explained by Hon'ble Apex Court in the case of State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and others reported in JT 2003 (4) 605. The Apex court has held that the power under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such source of power, when the High Court itself does not in terms purports to exercise any such discretionary power. It is settle law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and Tribubal's within the bonds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

In another decision, Surya Dev Rai Vs. Ram Chander Rai & others reported in JT 2003 (6) SC 465 the Apex Court has held that in exercise of certiorari or supervisory jurisdiction, the High Court will not covert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct in drawing inferences or correct errors of mere formal or technical character. Where a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step in to exercise its supervisory jurisdiction".

In view of the above law laid down by the Hon'ble Apex court, the High Court under Article 227 of the Constitution of India only interferes with the order of the subordinate court

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 5 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when the order in question has been passed without jurisdiction. Or exercised in a manner not permitted by law and failure of justice or grave injustice has resulted. In the present case, Order 8 Rule 1 of the C.P.C. specifically lays down that no period can be allowed beyond 90 days to the defendants to file the written statement and this provision does not provide any relaxation for giving the opportunity to the defendants to file the written statement beyond the period of 90 days.

In view of the above the trial Court has not committed any error in passing the impugned order as such writ petition has no merit and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

[पीछे देखिये